



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: January 8, 2014

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**APPLICATION: PACIFIC MALL & HOTEL GENERAL PLAN AMENDMENT**

**SUMMARY:** A request for a General Plan Amendment and Zoning Amendment to create a Freeway Corridor Overlay District to allow increases in Floor Area Ratio (FAR); and a Site Development Permit, Conditional Use Permit and Variance to allow demolition of 139,710 square feet of commercial building area and construction of 284,587 square feet of commercial building area; and a 240 room hotel. An Environmental Impact Report has been prepared and circulated for the project pursuant to the CEQA Guidelines.

**LOCATION:** 11-111 Ranch Drive (APN: 22-053-002, -003, -006, and -007.)

**APPLICANT:** TMS McCarthy, Inc., 4950 Yonge Street, Ste. 1010, Toronto, Ontario M2N 6K1

**OWNER:** Same as applicant

**RECOMMENDATION:** **Staff recommends that the Planning Commission: Adopt Resolution No. 14-001, recommending approval of the request for a General Plan Amendment and Zoning Amendment to create a Freeway Corridor Overlay District to allow increases in Floor Area Ratio (FAR) from 0.50 to 0.52; and a Site Development Permit, Conditional Use Permit and Variance to allow demolition of 139,710 square feet of commercial building area and construction of 284,587 square feet of commercial building area; and a 240 room hotel and certification of the Final Environmental Impact Report to the City Council.**

**PROJECT DATA:**

General Plan/

Zoning Designation: General Commercial (GNC)/General Commercial (C-2)

Overlays: Site and Architectural/Recreation & Entertainment

CEQA Determination: Certify the Final EIR (SC#20130220006) pursuant to Section 15090 of the CEQA Guidelines.

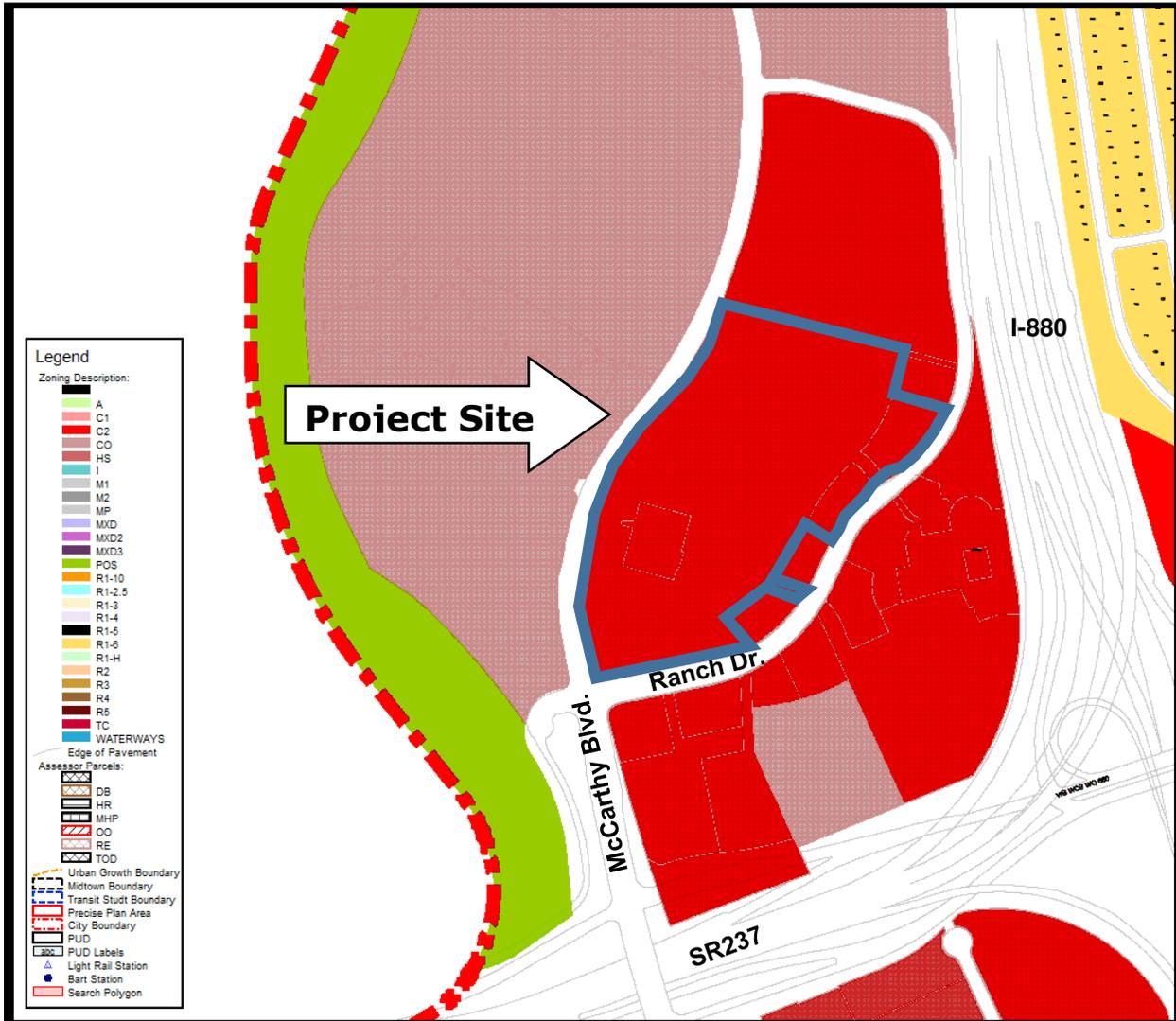
**PLANNER:** Sheldon S. Ah Sing, Senior Planner

PJ: 2824

**ATTACHMENTS:**

- A. Resolution No. 14-001
- B. Project Plans & materials palette
- C. Applicant Letter
- D. Transportation Impact Analysis (Excerpts-full version in Final EIR appendix and on-line)
- E. Final EIR (Draft + Response to Comments)

**Map 1**  
**Project Location**



Map 2  
Project Site



**EXECUTIVE SUMMARY**

The McCarthy Ranch Marketplace represents a key gateway location of the City of Milpitas. The Marketplace is approximately 68 acres in size located at the junction of two freeways (State Route 237 and Interstate 880). The commercial center is owned by different entities but essentially functions as one commercial center. The center includes Wal-Mart, a number of “big box” commercial outlets, restaurants and services. The center was constructed in the 1990s and represents approximately 593,000 square feet of floor area, making the Marketplace second in square footage to the Great Mall.

The 25.1 acre portion of the center that includes Best Buy and Ross has seen decline in recent years with the closure of Borders and other stores. The property was sold in 2012 to a group of investors from Canada with the vision to renovate the site into a new indoor mall destination with a hotel.

The City and applicants have been working together to process an application for the development of the site, which is the subject of this staff report. In summary, the proposal includes the demolition of a portion of the buildings onsite; the creation of a single level of underground parking; the construction of a two level indoor mall and a phased proposal for a 240 room hotel. In addition, a sign program is proposed, which includes a request to exceed the maximum sign area allowed for the site. The total net increase in floor area is 304,726 square feet, including the hotel space.

Because the proposal includes floor area ratio for the site greater than what the City’s code allows, an amendment to the General Plan and Zoning Ordinance is proposed in the form of an overlay district. The mall itself does not include any anchor stores, but rather a number of small shops owned individually through a condominium arrangement. This is a unique concept in the area, however, is modeled after a successful project in Toronto developed by the same group.

An Environmental Impact Report was prepared for the project in accordance with the California Environmental Quality Act and describes the project’s impacts on the environment as well as any alternatives proposed.



## BACKGROUND

The project site is currently developed with multiple retail buildings and is part of the McCarthy Ranch Marketplace. The retail center currently contains several “big-box” stores, restaurants, banks, services and two hotels. Several of the large retail spaces are vacant. The existing center has an agrarian architectural theme and landscaping that ties together the area.

### The Application

On January 30, 2013, an application was submitted pursuant to Section 57, Applications, of the Milpitas Zoning Code for a General Plan and Zoning Amendment, Site Development Permit, Conditional Use Permit and Tentative Map for the project. The following is a summary of the requests:

- *General Plan Amendment:* To allow an overlay to increase the Floor Area Ratio (FAR).
- *Zoning Amendment:* To allow an overlay to increase the FAR (consistent with General Plan Amendment).
- *Site Development Permit:* To evaluate the site layout, architecture, massing and signs for the project.
- *Major Tentative Map:* To establish commercial condominium spaces and to establish two parcels.
- *Conditional Use Permit:* Required with the Tentative Map; to allow the hotel use; to allow for live entertainment performances within the mall; to allow for the operation of the arcade; and to allow for shared parking.
- *Variance:* To allow for exceptions to the sign ordinance for maximum sign area allowed.

## PROJECT DESCRIPTION

### Overview

The project proposes demolition of existing retail space (151,820 square feet) and creates new retail space in an indoor mall with a hotel. The development would include up to 284,587 square feet (net increase of 132,767 square feet) of retail space and a 12-story 240-room hotel (171,959 square feet) on the project site. The total difference in square footage is 304,726 more than the existing retail buildings proposed for demolition. One level of underground parking is proposed for the project. The proposed project acknowledges the dated architectural theme and proposes something contemporary in line with Silicon Valley.

The project also proposes to reconfigure property lines by eliminating one parcel and creating another; however, no additional parcels will be created. Improvements are included on both reconfigured parcels and are included in the project analysis and Environmental Impact Report.

Tables 1 & 2 below provide a summary of the phasing of the project.

**Table 1**  
**Project Square Footage Before**

<b>Existing Buildings</b>	<b>Square footage</b>	<b>Remaining After Demolition Phase</b>	<b>Demolition</b>
A1	25,000	0	-25,000
A2	21,000	0	-21,000
B	51,000	0	-51,000
C	42,710	0	-42,710
D1	23,780	11,670	-12,110
D2	25,416	25,416	
E1	12,000	12,000	
E2	27,100	27,100	
E3	11,000	11,000	
12	12,000	12,000	
13	15,000	15,000	
Kiosk	210	210	
<b>Total</b>	<b>266,216</b>	<b>114,396</b>	<b>-151,820</b>

**Table 2**  
**Project Net Square Footage After**

<b>Project</b>	<b>Square footage</b>	<b>Difference</b>
Mall less	+284,587	+132,767
Demolition	-151,820	new retail
Hotel	+171,959	+171,959 hotel
D1	11,670	+304,726 overall
D2	25,416	0
E1	12,000	0
E2	27,100	0
E3	11,000	0
12	12,000	0
13	15,000	0
Kiosk	210	0
	570,942	<b>+304,726</b>

***Phasing of Hotel***

The applicant proposes phasing the hotel development for financing purposes. The applicant proposes to construct the foundations of the mall and the hotel; however, if financing is not available during the initial construction of the mall, then the future hotel portion will bonly be

constructed to the second floor. The first floor of the future hotel structure will remain the same as proposed. The second floor will be 15,360 square feet. Because there is no guarantee that the hotel will be constructed, the applicant has provided exhibits illustrating both development scenarios for Planning Commission consideration.

***Location & Land Use***

The 25.1-acre project site includes four parcels located on the east side of McCarthy Boulevard just north of State Route 237. The site is at the northeast corner of McCarthy Boulevard/South Ranch Drive intersection. The project site is zoned General Commercial, the surrounding parcels have the same zoning except for parcels east of McCarthy Boulevard, which are zoned Industrial Park. The subject parcel includes Site and Architectural Overlay and Recreation and Entertainment Overlay.

***Development Standards***

**Table 3**  
**Development Standards**

	<b>Zoning Ordinance</b>	<b>Proposed</b>
<u>Setbacks</u> (Minimum)		
Front (Ranch Dr.) to Primary Structure	0 feet	200 feet
Street Side (Ranch Dr.)	0 feet	75 feet
Interior	0 feet	90 feet (from existing)
Rear (McCarthy Blvd.)	0 feet	4 feet
<u>Floor Area Ratio</u> (Maximum)	0.50	0.52 for the project
<u>Building Height</u> (Maximum)	None	170 feet (hotel)
<u>Parking</u> (Minimum) (See below)		

To demonstrate the project’s proximity to McCarthy Boulevard, the applicant has constructed story poles at the closest portion of the building in relation to the street. At its closest point, the building would be located 10 feet from the curb of McCarthy Boulevard. Photograph 1 depicts the mock up.

**Photograph 1**  
**Mock Up**



***Floor Area Ratio (FAR)***

As identified in Table 3 above, the project exceeds the maximum FAR requirement for the C2 zoning district. A General Plan and Zoning Amendment requested by the applicant includes a new overlay district called “Freeway Corridor Overlay” to allow an increase of 20% from the underlying zoning district.

By applying the new overlay, the project would be in compliance with the FAR development standard.

**Freeway Corridor Overlay (-FC)**

*Purpose and Intent*

The purpose of the Freeway Corridor Overlay (-FC) is to allow for increased intensity where roadway capacity can accommodate the development.

*Applicability*

The (-FC) overlay can be combined with any non-residential zoned property within 300 feet of a freeway.

*Permitted, Accessory, and Conditionally Permitted Uses.*

Permitted and conditionally permitted uses within the (-FC) overlay are the same as those allowed within the underlying base zone.

*Development Standards*

The development standards for the underlying base zoning district shall apply, except any deviations noted below:

1. The maximum permitted Floor Area Ratio (FAR) may be up to twenty percent (20%) above the underlying base zoning district requirement.
2. This overlay may not be combined with any other overlay allowing additional FAR.

*Architecture*

The mall and the hotel are integrated, with the hotel anchoring the southern portion of the mall. The first level of the structure is below ground and accommodates a portion of the code required parking. A portion of the mall includes two levels above ground for a height of 75 feet. The hotel is 12 stories above grade with the tallest element being 170 feet.

The architecture features contemporary glass fenestration and curtain walls (glass), sloping roof designed to resemble the nearby mountains. Exterior walls will have a combination of smooth plaster and fiber reinforced concrete panel finish. The color scheme includes soft blue and gray tones. Conditions of approval for the project include ensuring certain elements such as lighting and details on the building and on-site complement the style of architecture.

*Landscaping*

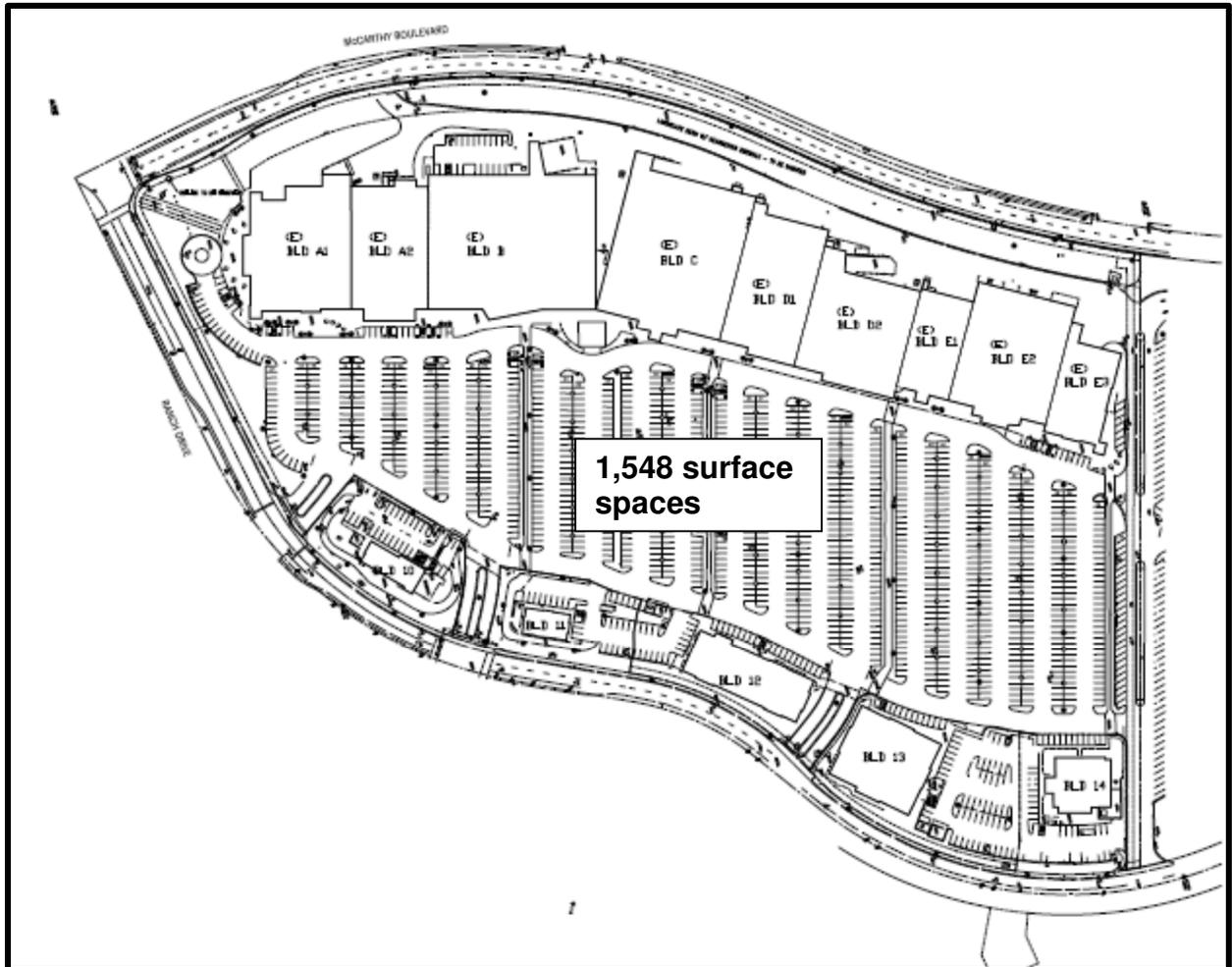
A complete landscape palette is proposed. Complementing elements include decorative hardscape finishes, outdoor furnishings and water features. Conditions of approval ensure compatibility with the existing McCarthy Ranch area, and the long-term maintenance of the landscaping,

*Parking*

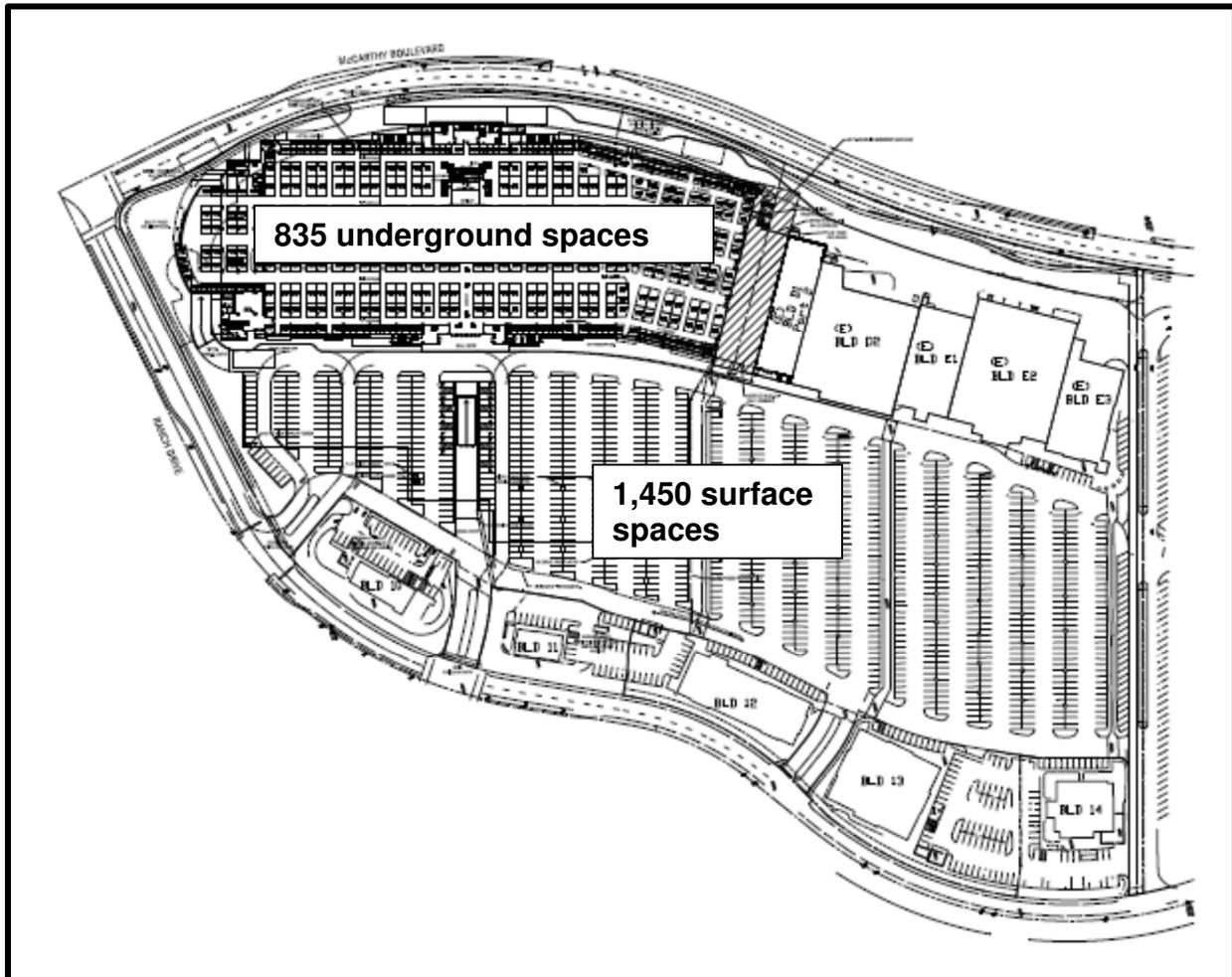
The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces.

The existing portion of the center not being demolished requires 485 parking spaces. The figures below demonstrate the parking changes between the existing conditions and the proposed project.

**Figure 1**  
**Existing Conditions (1,548 spaces)**



**Figure 2**  
**Proposed Conditions (2,285 spaces)**



### Shared Parking

Because the project includes a combination of guest serving and retail, the applicant proposed using “shared parking”. Dedicated parking areas for individual uses, especially when provided in new developments, can result in less efficient land usage, and lower floor area ratios.

Shared parking is typically applied when land uses have different parking demand patterns and are able to use the same parking spaces throughout the day. Shared parking is most effective when these land uses have significantly different peak parking characteristics than vary by time of the day, day of the week or season of the year. In these situations, shared parking strategies will result in fewer total parking spaces needed when compared to the total number of spaces needed for each land use or business separately.

Fehr & Peers (Transportation Consultants) developed a shared parking study following the City's Shared Parking requirements (Section 53.11) and the Urban Land Institute Shared Parking methodology (See Pages 115-119 of Attachment D). Shared parking occurs when complementary land uses on the same site or in close proximity are able to utilize the same parking spaces because they have different peak parking characteristics. The shared parking demand estimates are used to calculate the required parking supply considering how many spaces would be dedicated to the hotel uses and how the remaining parking spaces could serve both the hotel and retail uses during peak conditions.

The shared parking analysis estimated the 85th percentile peak parking demand for the project during weekdays and weekends and indicates the supply needed to meet the demands of the mixed-use project. In this case, the peak month is December and peak day is Saturday. The recommended parking supply should be 15 percent greater than the estimated parking demand to account for parking turn-over and perceived capacity. The results below indicate the following total parking supply needed to accommodate the shared demand with a 15 percent circulation factor:

- Weekday Demand: 1,193 parking spaces; Recommended Weekday Supply: 1,372 parking spaces (1,193 plus 15% circulation factor)
- Weekend Demand: 1,301 parking spaces; Recommended Weekend Supply: 1,496 parking spaces (1,301 plus 15% circulation factor)

The results of the supplemental shared parking analysis indicate that 1,496 spaces will be needed for the project based on the maximum weekend parking demand (which includes a 15% circulation factor). Thus, the project has proposed 14 spaces more than calculated using shared parking reductions. Note that is completely coincidental that the shared parking demand and the city code parking requirement are equal (the latter calculations did deviate from the code by using the "net" area versus the "gross" area by only including the tenant spaces). Also, it is important to recognize that the city code requirement assumes that several hotel amenities located on the 2nd floor of the hotel (fitness center, restaurant, meeting space) are only available to hotel guests. The shared parking model does not explicitly include this assumption; therefore, if these amenities were public, their parking demand is covered within the shared parking calculations.

#### Without Hotel Concept

If the hotel is not constructed, the parking analysis changes because a shared parking approach is not appropriate given that there will be no off-set in parking demand by guest serving and retail.

The project would be subject to Table 53.09-1, Number of Parking Spaces Required, within the City's Zoning Ordinance. The number of parking spaces provided for the project does not change. The number of parking required is demonstrated in the table below:

**Table 4**  
**Parking Required Based on City Code**

Use	Parking Ratio	Size (sq. ft.)	Required Parking
<b>Existing Center (Buildings D1-E3)*</b>			
Retail	1/181 sq. ft.	87,396 sq. ft.	485**
		<b>Sub-Total</b>	<b>485</b>
<b>Mall</b>			
Retail/Service	1/200 sq. ft.	139,927	700
Restaurant – Sit down	1/39 sq. ft. of dining area	6,907 sq. ft.	178
Restaurant – Take out	1/2.5 seats + 1/60 sq. ft. ordering area	340 seats + 12,519 sq. ft.	345
Office	1/240 sq. ft.	1,452	7
Entertainment – Arcade	1/200 sq. ft.	2,742 sq. ft.	14
		<b>Sub-Total</b>	<b>1,244</b>
<b>Interim Hotel Space</b>			
Restaurant—Sit down	1/39 sq. ft. of dining area	2,300 sq. ft.	59
Club (executive)	1/200 sq. ft.		61
		<b>Sub-Total</b>	<b>120</b>
		<b>Total</b>	<b>1,847</b>

\*Pad Buildings provide own parking.

\*\*Rounding up.

As demonstrated in the table above, the project without a hotel is consistent with the City's parking standards.

### ***Signs***

The McCarthy Marketplace includes an existing sign program. The existing sign area approved for the subject site, including buildings 12 and 13 is 6,928 square feet. Excluding Buildings 12 and 13, the allowable sign for the mall and adjacent in-line tenants is 5,690 square feet as summarized in Table 5 below.

**Table 5**  
**Site Sign Area Summary**

Total Frontage	2,276 feet
Allowable area (Frontage x 2)	4,552 square feet
25% additional area for Regional Shopping Center	1,138 square feet
Total Allowable area	5,690 square feet

Sign Program

A new proposed sign program maintains the existing signs for the in-line tenants to remain as well as for buildings 12 and 13. The proposed sign program is summarized in the table below. See Attachment B for detailed information.

**Table 6**  
**Summary of Proposed Sign Program**

<b>Pacific Mall</b>	<b>Plan Reference</b>	<b>Square footage</b>
Window sign	A	2,357
Window sign	B	1,336
Canopy sign	G	40
Canopy sign at main	H	162
Wall sign at main	H2	150
Entry wall sign	J	100
Electronic display	K	280
<b>Subtotal</b>		<b>4,425</b>
<b>Hotel</b>		
Wall sign	C	750
Wall sign	D	750
Wall sign	E	470
Canopy sign	F	75
<b>Subtotal</b>		<b>2,045</b>
Pylon Sign	P	450
<b>Subtotal</b>		<b>450</b>
<b>Total</b>		<b>6,920</b>

The project also includes directional signs (canopy entry signs and parking signs), which are not included in the sign area calculations. The proposed sign program exceeds the allowable sign area by 1,230 square feet. A Variance is required to exceed the maximum allowable sign area for the site.

*Building and Window Signs*

As proposed, the window signs will be perforated adhesive vinyl attached to the glass producing a sandblasted or frosted glass appearance. The mall signs, including the name of the restaurant are proposed to be face-lit channel letters.

As proposed, the entry signs, the bank name, and hotel name at the ground level are to be “pin-mounted” to canopies with face-lit channel lettering. The main hotel sign on the upper floor of the hotel, will accommodate a corporate brand logo and will be face-lit channel letters.

*High Definition Electronic Display*

A 280 square foot high definition electronic display is proposed on parking lot elevation of the building. The display will be used to announce events at the mall and advertise merchants.

*Pylon Sign*

The McCarthy Ranch Marketplace includes a 45 foot tall freestanding, freeway oriented sign located across from the project site and adjacent to I-880. The sign includes 450 square feet of sign area devoted to the identification of the center and tenants. The applicant has proposed to remodel the sign at a later time. Any modifications to the sign will require review by the Planning Commission Subcommittee.

*Operation of the Mall & Hotel*The Mall

The Pacific Mall is proposed to resemble the indoor-Asian Market of the same name in the Toronto area. The Toronto location Pacific Mall incorporates a traditional Pacific-style market. This Asian-themed shopping center has over 450 mini-shops selling a large variety of retail goods, as well as specialties such as herbs and ginseng, Asian fashions, flowers, accessories, CDs, DVDs, audio hi-fi, mobile phones, prescription eyeglasses and sunglasses, furniture, toys and stationery, and entertainment. It is also a well-known place for computer and car enthusiasts alike. There are a variety of places to purchase Asian food and drinks in the mall.

The project proposes 400-500 interior tenant spaces. The first level contains retail spaces, except for a bank, while the second level includes a restaurant, an arcade, professional offices and food service spaces. Tenant spaces on the main level range between 143 to 2,768 square feet in area, with only the bank tenant exceeding 435 square feet in area. The spaces on the second level range between 128 to 9,541 square feet. Only the proposed restaurant, arcade and six professional offices have square footages greater than 498 square feet on the second level. Both levels include a small area for a performance stage for entertainment.

Because there is a concern that the food service spaces could extend to the first floor and potentially change the parking demand, a condition of approval is included to limit restaurant uses (those using mechanical ventilation and grease traps) to the second floor of the mall. Coffee shops, ice cream shops and similar food services not requiring mechanical ventilation may be located on the first floor.

*Uses*

Within the C2 zoning district and the Recreation and Entertainment Overlay, retail, professional office and commercial service uses are permitted by right. However, certain types of uses such as “massage establishments”, “tobacco shops”, “alcohol sales”, “live entertainment”, “recreation or entertainment facilities” require the approval of a Conditional Use Permit. The applicant has identified live entertainment, alcohol sales and the recreation or entertainment facility (arcade) as a part of their proposal. Those are discussed below in detail. Any subsequent requests not covered by this entitlement would require additional review consistent with the Zoning Code in effect at the time of that request.

*Live entertainment/Night Market*

There will be live entertainment performed on either level in designed areas. Staff supports this request and recommends a condition of approval that the live entertainment be limited to the stage areas identified on the floor plans only. However, there may be times when special events are permitted in other areas if approved by the City.

*Alcohol*

The project includes restaurant and food service space on the second level of the mall. At this time it is unknown whether any restaurant or food service use will provide alcohol service. Each tenant will be responsible for filing an application on their behalf to comply with the Milpitas Zoning Ordinance regarding alcohol service.

*Arcade*

The project includes a 2,742 square foot arcade on the second level. The arcade is considered a Recreation and Entertainment facility and therefore requires a Conditional Use Permit. The arcade will be open during the regular hours of the mall and extended during the night market events.

The Hotel

The project includes a 240 room, 12-story hotel with guest amenities such as restaurant, meeting spaces, and fitness room. The main lobby of the hotel is on the second floor. The hotel operator is unknown at this time and the operations of the facility would depend on the operator. Conditions of approval are proposed to ensure that the hotel is not operated as a timeshare.

*Alcohol*

The hotel includes a guest restaurant that may sell alcoholic beverages. As with the mall, it is unknown at this time whether the restaurant will provide alcohol beverage service. The operator of the restaurant will need to file an application on their behalf to comply with the Milpitas Zoning Ordinance regarding alcohol service.

***Compliance with City's Climate Action Plan***

The project will comply with the City's adopted Climate Action Plan through conditions of approval, such as restricting the use of gasoline powered leaf blowers or string trimmers in the ongoing maintenance of the landscaping for the site. The project will include low-emission vehicle (electric charging) parking, ridesharing program and pre-wired photovoltaic system for the hotel. In addition, the project is seeking LEED certification. All of these measures will cumulatively meet or exceed the City's Climate Action Plan requirements.

**REQUIRED FINDINGS**

A finding is a statement of fact relating the information that the Planning Commission or City Council has considered in making a decision. Findings discuss the rationale behind the decision to take a certain action.

***General Plan Amendment***

To approve the General Plan Amendment, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.02(G):

1. The proposed amendment is internally consistent with those portions of the General Plan which are not being amended.

*The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The proposed overlay to allow for the*

*increase in Floor Area Ratio does not conflict with other sections of the General Plan. The overlay is only applicable to properties within the vicinity of a freeway and would need to be applied for on a case by case basis with those impacts being analyzed with the project proposing the overlay. Applying the overlay does not preclude the applicability of other policies in the General Plan.*

2. The proposed amendment will not adversely affect the public health, safety, and welfare.

*The proposed overlay to increase the Floor Area Ratio does not supersede any other applicable public health, safety and welfare codes and regulations related to the review of the project. The proposed overlay does not hinder the ability of the City to monitor, regulate or enforce public health, safety for a project. Any project would need to receive specific discretionary site development review.*

***Zoning Amendment***

To approve the Zoning Amendment, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.02(G):

1. The proposed amendment is consistent with the General Plan.

*The General Plan is concurrently being amended with the creation of a new overlay to implement the project.*

2. The proposed amendment will not adversely affect the public health, safety, and welfare.

*The proposed overlay to increase the Floor Area Ratio does not supersede any other applicable public health, safety and welfare codes and regulations related to the review of the project. The proposed overlay does not hinder the ability of the city to monitor, regulate or enforce public health, safety for a project. Any project would need to receive specific discretionary site development review.*

***Site Development Permit***

To approve the Site Development Permit, the following findings must be made pursuant to Milpitas Municipal Code Section XI-10-57.03(F):

**General Findings**

1. The layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development.

*The architecture features contemporary glass fenestration and curtain walls (glass), sloping roof designed to resemble the nearby mountains. Exterior walls will have a combination of smooth plaster and fiber reinforced concrete panel finish. The color scheme includes soft blue and gray tones. Conditions of approval for the project include ensuring certain elements such as lighting and details on the building and on-site complement the style of architecture. The project's site design, architecture and massing include materials, variation in height, façade*

*plane changes, and landscaping that is appropriate for the surroundings. The use of glass, stucco, and sloping roof combined with landscaping is designed to complement the surrounding.*

2. The project is consistent with the Milpitas Zoning Ordinance.

*The project's Floor Area Ratio exceeds the thresholds of the underlying zoning district. The project includes a shared parking analysis to comply with the City's parking regulations. The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces. The project would provide sufficient amount of parking for the existing and proposed uses (1,496 required spaces with shared parking and 1,847 required spaces without shared parking and hotel). The only development standard requirement from the General Commercial Zoning district is the FAR. With the proposed overlay to increase the Floor Area Ratio for the site and conditions of the approval, the project is consistent with the Zoning Ordinance.*

3. The project is consistent with the Milpitas General Plan.

*The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.*

*The project is consistent with Policies:*

- a. (2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that includes an underperforming commercial format.*
- b. (2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes small retail spaces that would cater to local businesses rather than national chain brands.*
- c. (2.a-I-17) Foster community pride and growth through beautification of existing and future development. The project includes the demolition of an older shopping center and the construction of a contemporary designed commercial facility.*

### Signs

1. All elements of the sign, including design, lighting, scale, length and materials, are consistent with the intent of the General Plan, the Sign Ordinance and any applicable Specific Plan.

*The project's proposed signs are in conformance with the design guidelines of the Sign Ordinance. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.*

2. The design, scale and materials of the sign harmonize with the architectural design and details of the building or site it serves.

*The proposed signs provide compatibility of materials, architecture, design and continuity with other signs and buildings on-site. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.*

3. The design and scale of the sign is appropriate to the distance from which the sign is normally viewed.

*The proposed signs provide visibility and legibility and provide the appropriate relationship of scale and height to the building. The vinyl lettering on the glass curtain is appropriate for the size of the building.*

4. The design and materials of the sign provide a contrast between the background and letters.

*The proposed design and materials of the signs provide contrast between the background and letters. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.*

### Sign Program

1. The provisions of the Sign Program ensure consistency in design and style of all new signs.

*The proposed sign program provides the dimensions, size and location for future sign requests for the project.*

2. The provisions of the Sign Program address compatibility of the design and style of any existing signs on the building or site.

*The proposed signs provide compatibility of materials, architecture, design and continuity with other signs and buildings on-site. The signs include a combination of channel letters mounted on the wall or canopies. The vinyl lettering on the glass curtains of the building resemble a frosted or sandblasted effect.*

3. All new signs within the Sign Program are in compliance with the design guidelines of this Chapter.

- a. *The proposed signs provide appropriate relationship of size to space on the building. The vinyl lettering on the glass curtain is appropriate for the size of the building.*
- b. *The proposed signs have the appropriate relationship of height of the building. The vinyl lettering on the glass curtain is appropriate for the size of the building. The proposed signs depicted on the project plans on the wall of the hotel are appropriate given the height of the hotel.*

***Tentative Map***

To approve the Tentative Map, the following findings must be made pursuant to Milpitas Municipal Code Section XI-1-4.03:

1. The tentative map conforms to the Milpitas Subdivision Ordinance.

*The proposed project was submitted with the appropriate information (acreage, lot dimensions, etc. required in Section XI-1-4.02, form of Tentative Map, of the Municipal Code.*

2. The tentative map conforms to the Milpitas General Plan.

*The proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.*

*The project is consistent with Policies:*

- a. *(2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that includes an underperforming commercial format.*
- b. *(2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes small retail spaces that would cater to local businesses rather than national chain brands.*
- c. *(2.a-I-17) Foster community pride and growth through beautification of existing and future development. The project includes the demolition of an older shopping center and the construction of a contemporary designed commercial facility.*

***Conditional Use Permit***

To approve the Conditional Use Permit, the following findings must be made pursuant to Milpitas Municipal Code Section XI-57-10.04(F):

1. *The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare.*

*The project “shared parking”, a “hotel”, an “arcade” and “live entertainment”, which requires the approval of a Conditional Use Permit.*

- a. *With respect to the shared parking: the restaurant uses will be limited to the second floor of the mall and the hotel, with the exception of food services that do not use mechanical ventilation and grease traps. This is intended to curb potential parking demand concerns;*
  - b. *With respect to the hotel, as conditioned, the hotel will not operate as a “timeshare”;*
  - c. *With respect to the arcade, the arcade would be open during the hours that the mall is open;*
  - d. *With respect to live entertainment, live entertainment will occur at the two designated areas within the mall, unless a specific permit is issued by the Milpitas Fire Department.*
2. The proposed use is consistent with the Milpitas General Plan.

*The proposed project is consistent with the underlying General Commercial designation in that the proposed project is consistent with the underlying General Commercial designation in that retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.t retail and professional services are proposed. The underlying land use designation allows up to 0.50 FAR. The project proposes an FAR of 0.52. The General Plan is concurrently being amended with the creation of a new overlay to implement the project.*

*The project is consistent with Policies:*

- a. *(2.a-I-3) Encourage economic pursuits which will strengthen and promote development through stability and balance. The project creates new commercial opportunities at a location that includes an underperforming commercial format.*
  - b. *(2.a-I-7) Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. The project includes small retail spaces that would cater to local businesses rather than national chain brands.*
  - c. *(2.a-I-17) Foster community pride and growth through beautification of existing and future development. The project includes the demolition of an older shopping center and the construction of a contemporary designed commercial facility.*
3. The proposed use is consistent with the Milpitas Zoning Ordinance.

*The project’s Floor Area Ratio exceeds the thresholds of the underlying zoning district. The project includes a shared parking analysis to comply with the City’s parking regulations. The existing site provides 1,548 surface parking spaces (1,324 for the major buildings and 224 for the pad tenants). The proposed project will eliminate 98 surface parking spaces, leaving 1,450 surface parking spaces. The proposed project will include 835 underground parking spaces, bringing the total amount of parking available on site to 2,285 spaces. The project would*

*provide sufficient amount of parking for the existing and proposed uses (1,496 required spaces with shared parking and 1,847 required spaces without shared parking and hotel). The only development standard requirement from the General Commercial Zoning district is the FAR. With the proposed overlay to increase the Floor Area Ratio for the site and conditions of the approval, the project is consistent with the Zoning Ordinance.*

### **Variance (Signs)**

To approve the Variance, the following findings must be made pursuant to Milpitas Municipal Code Section XI-57-10.06(F):

1. Special conditions and extraordinary circumstances applicable to the property involved or its intended uses, which were not created by the owner or tenant, and which do not apply generally to other properties with the same land use exist that do not allow the site or business to achieve the goals and objectives of this Chapter for adequate business identification.

*The site was a part of a larger “McCarthy Ranch Marketplace” shopping center. The new ownership only owns the portion of the retail facility on the west side of Ranch Drive. The Mall is now separated from view of the freeway by the retail facility on the east side of Ranch Drive. In addition, the State Route 237 interchange blocks the view of the site from northbound I-880. Construction of the highway 880/237 elevated ramps that occurred after completion of the retail center, has significantly reduced the views of the shopping center from the freeway and will similarly limit the visibility of the proposed mall and hotel unless additional graphics are permitted.*

2. Literal enforcement of the provisions of the City of Milpitas the Sign Ordinance will result in unnecessary hardship inconsistent with the spirit and intent of the Sign Ordinance.

*The project proposes subtle window signs identifying the mall “Pacific Mall”. Otherwise, the project will need to rely on a larger off-site project identification sign. Unlike a traditional retail center that benefits from having quickly and easily recognizable national brands, this unique business relies on the visibility of its own brand being seen from neighboring roads and freeways. Due to the presence of the 237/880 ramp system, literal interpretation of the sign code will not allow this business to adequately identify itself to the surrounding area.*

3. The granting of the variance is not contrary to the intent of the General Plan, Zoning or Sign Ordinance, or any applicable Specific Plan and will not be contrary to, nor materially detrimental to public interest and welfare, or injurious to conforming signs in the City.

*The proposed window signs are subtle and relate well to the proposed mall and surrounding existing shopping center. The intent of the Sign Code is to permit businesses to adequately identify and promote themselves. Allowing this project adequate signage to be successful will benefit the City, its citizens and community at large.*

4. The variance to be granted is one that will require the least modification of the prescribed regulation, and the minimum variance that will accomplish that purpose.

*In order to meet the objective of the project, the sign ordinance would need to be amended allowing additional sign area for a regional shopping center and allowing additional percentage of sign area for window signs. That would mean that all future proposals for signs are subject to the new regulations. That may not be appropriate in all applications. Therefore, the variance is the most appropriate approach.*

5. The granting of a variance is not considered a grant of special privileges inconsistent with the limitations of other similarly situated properties.

*Other retail properties are immediately adjacent to either State Route 237 or I-880 and do not have the same visibility limitations.*

**ENVIRONMENTAL REVIEW**

***Background***

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project required an Environmental Impact Report (EIR).

A Notice of Preparation was circulated on February 1, 2013 for 30 days. The Draft EIR was circulated between May 8, 2013 and June 24, 2013.

***Summary of Impacts***

The Draft EIR identifies several areas where there are significant impacts. The following table summarizes those impacts and suggested mitigation measures.

**Table 7**  
**Draft Environmental Impact Report Significant Impacts and Mitigation Measures**

Significant Impacts	Mitigation Measures
<b>Transportation</b>	
Implementation of the proposed project would cause the LOS of the McCarthy Boulevard/SR 237 WB Ramps intersection to degrade from C to E+ in the mid-day peak hour under existing plus project conditions.	McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in an improvement in intersection operations in the mid-day Peak Hour. <b>Less Than Significant With Mitigation</b>
Implementation of the proposed project would cause the LOS of the McCarthy Boulevard/S.	There are no feasible mitigation measures to reduce the impact to the McCarthy Boulevard and S. Ranch Drive intersection. <b>Significant</b>

Significant Impacts	Mitigation Measures
Ranch Drive intersection to degrade from D to E in the PM Peak Hour.	<b>Unavoidable Impact</b>
Implementation of the proposed project would cause the LOS of the McCarthy Boulevard/SR 237 WB Ramps intersection to degrade from D to E in the PM peak hour under background plus project conditions.	McCarthy Boulevard and SR 237 WB Ramps (No. 9): Restriping the westbound through lane to a right turn lane to provide two right-turn lanes will be completed prior to issuance of occupancy permits for the proposed project. Signal modification would also occur to create a right-turn overlap phase. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS E to LOS C in the PM Peak Hour. <b>Less Than Significant With Mitigation</b>
Implementation of the proposed project would result in an increase in critical delay of 4.7 seconds and an increase in the volume to capacity ratio (V/C) of 0.013 in the PM Peak Hour at the McCarthy Boulevard/Bellew Drive intersection under background plus project conditions.	McCarthy Boulevard and Bellew Drive (No. 16): Restriping the eastbound approach of Bellew Drive to provide two left-turn lanes and one shared through/right-turn lane will be completed prior to issuance of occupancy permits for the proposed project. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to D- in the PM Peak Hour. <b>Less Than Significant With Mitigation</b>
Implementation of the proposed project would result in an increase in critical delay of 15.2 seconds and an increase in the volume to capacity ratio (V/C) of 0.039 in the PM Peak Hour at the McCarthy Boulevard/Alder Drive intersection under background plus project conditions.	McCarthy Boulevard and Alder Drive (No. 17): A second southbound left turn land from McCarthy Boulevard to Alder Drive will be constructed prior to issuance of occupancy permits for the proposed project. Right-of-way acquisition from the property on the west side of McCarthy Drive will be required by the applicant. This improvement will result in a lengthening of the crosswalk and/or modification of signal phasing that could increase the crossing distance/time for pedestrians. The traffic engineer determined that this would have no significant impact on pedestrian facilities. Implementation of this mitigation would result in the intersection operations improving from LOS F to D in the PM Peak Hour. <b>Less Than Significant With Mitigation</b>

Significant Impacts	Mitigation Measures
<p>Implementation of the proposed project would result in an increase in critical delay of 5.4 seconds and an increase in the volume to capacity ratio (V/C) of 0.015 in the PM Peak Hour at the Tasman Drive/Alder Drive intersection under background plus project conditions.</p>	<p>Conversion of one southbound through lane on Alder Drive to a left-turn lane, which will result in a total of three southbound left-turn lanes, will be completed prior to issuance of occupancy permits. No right-of-way acquisition would be required. Implementation of this mitigation would result in the intersection operations improving from LOS F to E and a decrease in delay to 60.1 seconds, thereby improving the operation of the intersection compared to background conditions without the project. <b>Less Than Significant With Mitigation</b></p>
<p>Implementation of the proposed project would result in an increase in critical delay of 6.7 seconds and an increase in the volume to capacity ratio (V/C) of 0.015 in the PM Peak Hour at the McCarthy Boulevard-O’Toole Avenue/Montague Expressway intersection under background plus project conditions.</p>	<p>McCarthy Boulevard/O’Toole Avenue and Montague Expressway (No. 28): Restripe northbound O’Toole Avenue approach from Rincon to Montague Expressway to provide a dedicated right-turn lane from O’Toole Avenue onto Montague Expressway. Associated traffic signal modification would also be implemented. No right-of-way acquisition would be required. With implementation of this mitigation the intersection would operate at LOS D in the AM Peak Hour, but would continue to operate at LOS F in the PM Peak Hour. <b>Less Than Significant With Mitigation</b></p>
<p>Implementation of the proposed project would result in an increase in traffic volumes of more than one percent on eastbound SR 237 between McCarthy Boulevard and I-880 in the PM Peak Hour under existing plus project conditions.</p>	<p>There is no feasible mitigation to reduce the project’s freeway impacts to a less than significant level. <b>Significant Unavoidable Impact</b></p>
<b>Air Quality</b>	
<p>Construction of the proposed project will result in NOx emissions in excess of the 54 pounds per day threshold, even with inclusion of Bay Area Air Quality Management District (BAAQMD) dust and exhaust control measures.</p>	<p>There are no additional mitigation measures, other than the aforementioned BAAQMD dust and exhaust control measures. This impact would be temporary but would remain significant. <b>Significant Unavoidable Temporary Impact</b></p>
<b>Biological Resources</b>	

Significant Impacts	Mitigation Measures
<p>Construction activities associated with the proposed project could result in the loss of fertile eggs, nesting raptors or other migratory birds, or nest abandonment.</p>	<p>1. Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February through August.</p> <p>2. If it is not possible to schedule demolition and construction between September and January, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests will be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the ornithologist will inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with CDFW, will determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction. <b>Less Than Significant Impact With Mitigation</b></p>
<p>The loss of 226 trees on-site, including 50 ordinance sized trees, would be a significant impact.</p>	<p>1. In conformance with the City of Milpitas Municipal Code, all trees removed from the site that measure 37-inches or greater in circumference (12 inches in diameter) at 48 inches above the ground surface will be replaced at a 3:1 ratio within the project site. The species and size of the replacement trees will be determined by City staff.</p> <p>2. Due to the proposed underground parking structure, it may not be possible to plant all replacement trees on-site. Trees that are removed but cannot be mitigated for on-site will be mitigated by fees paid to the City. The funds will be deposited in the City’s Tree Replacement Fund and will be used to plant trees within the</p>

Significant Impacts	Mitigation Measures
	City of Milpitas. <b>Less Than Significant Impact With Mitigation</b>
<b>Hazards and Hazardous Materials</b>	
<p>Implementation of the proposed project could expose construction workers and future on-site maintenance workers to contaminated soil from historic agricultural operations on-site.</p>	<ol style="list-style-type: none"> <li>1. After demolition but prior to the issuance of grading permits, shallow soil samples shall be taken to determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds. The soil sampling plan must be reviewed and approved by the Milpitas Fire Chief prior to initiation of work.</li>   <li>2. Once the soil sampling analysis is complete, a report of the findings will be provided to the Milpitas Fire Chief, Director of Planning and Neighborhood Services, and other applicable City staff for review.</li>   <li>3. If contaminated soils are found in concentrations above established thresholds, a Site Management Plan (SMP) will be prepared and implemented (as outlined below) and any contaminated soils found in concentrations above established thresholds shall be removed and disposed of according to California Hazardous Waste Regulations. The contaminated soil removed from the site shall be hauled off-site and disposed of at a licensed hazardous materials disposal site. A SMP will be prepared to establish management practices for handling impacted groundwater and/or soil material that may be encountered during site development and soil-disturbing activities. Components of the SMP will include: a detailed discussion of the site background; preparation of a Health and Safety Plan by an industrial hygienist; notification procedures if previously undiscovered significantly impacted soil or free fuel product is encountered during construction; on-site soil reuse guidelines based on the California Regional Water Quality Control Board, San Francisco Bay Region’s reuse policy;</li> </ol>

Significant Impacts	Mitigation Measures
	<p>sampling and laboratory analyses of excess soil requiring disposal at an appropriate off-site waste disposal facility; soil stockpiling protocols; and protocols to manage ground water that may be encountered during trenching and/or subsurface excavation activities. Prior to issuance of grading permits, a copy of the SMP must be approved by the SCCEHD, the City’s Director of Planning and Neighborhood Services, and the Milpitas Fire Chief. <b>Less Than Significant Impact With Mitigation</b></p>
<b>Noise</b>	
<p>Implementation of the proposed project could expose future hotel guests to interior noise levels in excess of acceptable City and State standards.</p>	<ol style="list-style-type: none"> <li>1. A qualified acoustical consultant will review final site plans, building elevations, and floor plans prior to construction to calculate expected interior noise levels as required by City policies and state noise regulations. Project specific acoustical analyses are required by the California Building Code to confirm that the design results in interior noise levels of 45 dBA or lower. The specific determination of what noise insulation treatments (i.e., sound rated windows and doors, sound rated wall construction, acoustical caulking, protected ventilation openings, etc.) are necessary will be conducted on a unit by unit basis. Results of the analysis, including the description of the necessary noise control treatment, will be submitted to the City along with the building plans and approved prior to issuance of any building permits.</li> <li>2. All guest rooms will be equipped with forced-air mechanical ventilation so that windows can be kept closed at the discretion of the guests.</li> <li>3. All noise insulation treatments identified during review of the final site plans will be incorporated into the proposed project. <b>Less Than Significant Impact With Mitigation</b></li> </ol>

Significant Impacts	Mitigation Measures
<b>Cumulative Impacts</b>	
Implementation of the proposed project would have a significant impact on six local intersections and one CMP intersection under cumulative with project conditions.	Discussed above.

***Project Alternatives Pursuant to CEQA***

An EIR is required to describe a reasonable range of alternatives to the proposed project that could be feasibly attain most of the project objectives while avoiding or considerably reducing any of the significant impacts of the proposed project.

No Project

A “no project” alternative is a requirement under CEQA. With this alternative all of the significant impacts are avoided, however, none of the project objectives are met.

Reduced Density

With this alternative, the project square footage is reduced by 25%. This alternative avoids the significant and unavoidable impact to SR 237 eastbound segment from McCarthy Boulevard to I-880 and reduces the LOS impacts identified. The alternative would achieve all of the objectives, but on a smaller scale.

Environmentally Superior Alternative

Pursuant to CEQA, based on the above discussion, the “reduced density” alternative is the environmentally superior alternative because the project’s significant unavoidable freeway segment impacts and significant LOS impacts would be avoided and no new impacts would result. The project objectives are met, but on a smaller scale.

Nothing compels the City to choose the EIR alternative over the project.

***Final EIR***

Comments on Draft EIR

Comments on the Draft EIR and responses to those comments are included in the Final EIR (Attachment E). None of the issues raised in the comments require new mitigation measures or a re-circulation of the EIR pursuant to CEQA.

Errata

Changes to the Draft EIR are included in the Errata section of the Final EIR. None of the changes to the document require new mitigation measures or a re-circulation of the EIR pursuant to CEQA.

**PUBLIC COMMENT/OUTREACH**

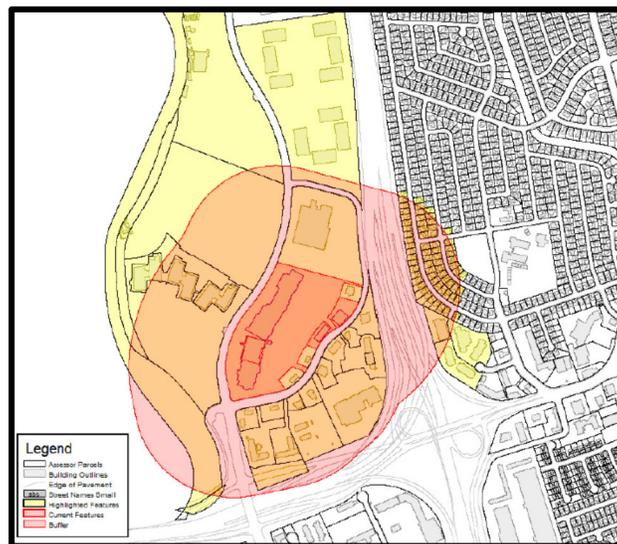
Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been interest in the project, however, no formal written comments have been submitted to the City, that are not included in the project’s EIR. The table below provides a summary of the City’s public noticing efforts for this project.

**Table 8**  
**Public Noticing Summary**

Notice of Public Hearing	Agenda
<ul style="list-style-type: none"> <li>▪ Posted on the site (<i>14 days prior to the hearing</i>)</li> <li>▪ Two hundred and eighty two (190) notices mailed to property owners and residents within 1,000 feet to the project site (<i>10 days prior to the hearing</i>)</li> <li>▪ Posted on the City's official notice bulletin board (<i>10 days prior to the hearing</i>)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Posted on the City's official notice bulletin board (<i>5 days prior to the hearing</i>)</li> <li>▪ Posted on the City of Milpitas's Web site (<i>one week prior to the hearing</i>)</li> </ul>

The map below illustrates the extent of the mailed notices.

**Map 3**  
**Public Notice Radius**



**CONCLUSION**

The project represents a major renovation of an outdated shopping center. It also incorporates consideration for complementing surrounding development. The project's EIR discloses potential impacts on the environment. Findings are made for the project identifying how the project is consistent with the City's adopted plans.

**RECOMMENDATION**

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing after hearing testimony and Adopt Resolution No. 14-001, recommending approval of the request for a General

Plan Amendment and Zoning Amendment to create a Freeway Corridor Overlay District to allow increases in Floor Area Ratio (FAR) from 0.50 to 0.52; and a Site Development Permit, Conditional Use Permit and Variance to allow demolition of 139,710 square feet of commercial building area and construction of 284,587 square feet of commercial building area; and a 240 room hotel and certification of the Final Environmental Impact Report to the City Council.

*Attachments:*

- A. Resolution No. 14-001
- B. Project Plans & materials palette
- C. Applicant Letter
- D. Transportation Impact Analysis (Excerpts-full version in Final EIR appendix and on-line)
- E. Final EIR (Draft + Response to comments)